IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 33 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVINDBHAI JATARIABHAI GAMIT - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR UTPAL M PANCHAL for Applicant(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PRANAV G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/09/2006

ORAL JUDGMENT

On the last occasion, i.e. 08.09.2006, the learned advocate Mr.Utpal M. Panchal for the applicant sought time as only interest amount had remained to be paid by

the applicant to the respondent-Bank.

2. Mr.Utpal M. Panchal for the applicant informs this Court that the amount is paid and the Bank has issued 'No Due Certificate' in favour of the applicant.

3. The present Criminal Revision Application is filed being aggrieved by the judgement and order dated 15.01.2004, whereby the learned Additional Sessions Judge, Valsad was pleased to dismiss the appeal and confirm the judgement and order passed by the learned 2nd Judicial Magistrate, First Class in Criminal Case No.2372 of 1991, whereby the present petitioner-original accused is convicted for an offence under section 403 of the IPC and was awarded sentence of 18 months simple imprisonment, fine of Rs.2000/-, in default to undergo further 2 months of simple imprisonment. The learned JMFC was pleased to record conviction and award the aforesaid sentence under under section 248(2) of the Code of Criminal Procedure after hearing the petitioner-original accused on the point of sentence. The petitioner-original accused had submitted to the learned JMFC that he is the only earning member in his family, he has young children, an appeal filed by the Bank is pending. It was prayed that taking into consideration all

these factors mercy be shown and minimum sentence be awarded to him.

Subsection (6) of section 320 of the Code of Criminal Procedure, 1973 reads as under:

> “A High Court or Court of Sessions acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.”

4. The learned advocate Mr.Panchal submitted that the offence under section 403 of IPC is punishable with imprisonment for a term which may extend to two years, or with fine or both. He submitted that it is a non cognisable, bailable offence triable by any Magistrate. He submitted that the offence is compoundable on the option of the owner of the property in respect of which breach of trust is committed, with the permission of the Court. He submitted that in view of the fact that the present petitioner has already paid not only the principal amount but has also paid the interest amount, he requests that the offence may be compounded.

5. Mr.Pranav G. Desai, the learned advocate appearing for respondent no.2-State Bank of India states that he is instructed by his client that he-the complainant has no objection if the offence is compounded. Mr.Desai, therefore, requested that let the matter be allowed and the complaint be quashed.

6. In view of the submissions made by the learned advocate for the petitioner-accused that the petitioner has made good the alleged misappropriated amount along with interest, that a xerox copy of the 'No Due Certificate' issued by the complainant-Bank in favour of the petitioner-accused is produced on record of this case, and the fact that the parties are jointly submitting that the matter is compounded out of the Court, no useful purpose would be served in proceeding with the matter further. This Court in the matter of **Nitinbhai Mathurdas Thakkar & others Vs. State of Gujarat** and another, reported in 2005 (3) G.L.R. 2377, has quashed the complaint when there was a compromise. The Hon'ble the Apex Court in the matter of **State of Karnataka Vs. L. Muniswamy & others**, reported in A.I.R. 1977 SC 1489 has observed in para 7 as under:

> “7. xxx xxx
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> In the exercise of this wholesome power, the

> High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. .. ..“

7. In view of the above, this Court is inclined to and accordingly quash the impugned complaint. The Criminal Revision Application is allowed.

(RAVI R. TRIPATHI, J.)

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